

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YVONNE JAKUBOWSKI,

Plaintiff,

v.

File No. 1:11-CV-597

MOSAIC MERCANTILE, INC.,
a Montana corporation, and
HOBBY LOBBY STORES, INC.,
an Oklahoma corporation,
TRIANGLE COATINGS, INC., a
California corporation, and
MICHAEL YABLON, individually,

Defendants.

Hearing re: Motion for Default Judgment

Before

THE HONORABLE ROBERT HOLMES BELL
United States District Judge
May 31, 2012

APPEARANCES

MICHELLE McLEAN
3996 Chicago Drive SW
Grandville, MI 49418
Attorney for Plaintiff

Kevin W. Gaugier, CSR-3065
U.S. District Court Reporter

Grand Rapids, Michigan

May 31, 2012

3:08 p.m.

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P R O C E E D I N G S

THE COURT: The next matter is 1:11-CV-97. Ms. McLean --

MS. McLEAN: Hello, Your Honor.

THE COURT: -- has been here patiently waiting through this whole matter. Thank you so much for being so patient here with us. This has been a very busy afternoon and we're not through yet, so we appreciate your patience with us.

This is a motion for a default judgment, and apparently this matter is relating to Mosaic Mercantile, Inc. who is a served defendant, a Montana corporation. They were served. They have not answered, so I believe you have not only a motion for default, but you wish to take testimony in this matter. Is that correct?

MS. McLEAN: That's correct, Your Honor. Did I hear you say it was against Mosaic Mercantile today, the judgment?

THE COURT: Triangle Coatings, I'm sorry.

MS. McLEAN: Yes.

1 THE COURT: Triangle Coatings. I'm sorry, you're
2 correct, Triangle Coatings, which is a California
3 corporation, and service was rendered in California, that's
4 right. That's right.

5 MS. McLEAN: That's correct.

6 THE COURT: You are correct.

7 MS. McLEAN: Yes, Your Honor. I would like to call
8 my client, Yvonne Jakubowski, to present some testimony to the
9 Court today as to what her damages are.

10 THE COURT: Okay. You may come up here and be
11 sworn.

12 YVONNE E. JAKUBOWSKI,
13 A witness called at 3:10 p.m., sworn by the Court,
14 testified:

15 DIRECT EXAMINATION

16 BY MS. McLEAN:

17 Q Can you state your whole name for the record?

18 A Yvonne Elaine Jakubowski.

19 Q Yvonne, do you recall back in 2008 using a product that
20 you purchased from Hobby Lobby?

21 A Yes, I do.

22 Q And were you injured after having used that product?

23 A Yes, I was.

24 Q Did your injuries consist of sinal -- sinus drainage and
25 trouble breathing, swelling on your legs, and a rash, blisters

1 of sorts?

2 A Yes.

3 Q And after having used the product did you notice that
4 there was anything wrong with the label?

5 A Yes, I did.

6 Q Specifically was it labeled with a double label?

7 A Yes, it was, one label over another label.

8 Q Do you know if Triangular Coatings was the manufacturer
9 of that product?

10 A Yes, they were.

11 Q And since that has happened, since you were injured, can
12 you tell me -- were you into crafts quite a bit before this
13 occurred?

14 A Yes, I was.

15 Q Do you still do a lot of crafts now?

16 A No, not as much, no. Not very much.

17 Q And in terms of your physical symptoms, have you met with
18 a medical doctor?

19 A Yes, I have.

20 Q And have you had an increase in bronchitis and sinusitis
21 since the incident?

22 A Yes, I have.

23 Q Have you continued to deal with that to this day?

24 A Yes, I do.

25 Q What other types of incidents or symptoms have you had?

1 You have coughing?

2 A Yes, I have coughing. I have -- now I've developed
3 polyps in my sinuses, and so I've been put on steroids to
4 decrease those, and I get bronchitis and I have a lot of
5 coughing.

6 Q Does it interfere with your activities that you used to
7 enjoy before?

8 A Oh, yes, yes. I used to -- I used to jog and I was a lot
9 more physically active. And we like to go to movies and
10 concerts and things like that, but if I start coughing and I
11 can't stop, I have to leave, so I can't really enjoy a lot of
12 things that we have in the past, my husband and I.

13 Q Do you have any concerns about the exposure to the
14 chemicals and long-term consequences?

15 A I do. I mean, possibly I could contract cancer in my
16 lungs or in my sinuses or something. Yeah, I don't know.

17 Q In terms of other activities like even walking, does it
18 affect you now, like are you having problems breathing if you
19 exert yourself at all versus before you had the exposure to
20 the chemical?

21 A Yes, I do. I get shortness of breath if I climb stairs
22 or walk fast.

23 Q And you've noticed that that specifically occurred after
24 having been exposed to that incorrectly labeled product?

25 A Yes. Yes, I have.

1 Q Do you know about what you've spent in medical costs so
2 far as a result of your increased need to see a doctor? Do
3 you believe they're --

4 A I think about -- I think it's around ten or fifteen
5 thousand or around --

6 Q Specifically out-of-pocket was it close to \$1,799.25?

7 A Yes, I think that would be right.

8 Q And do you think that you're going to be continuing to
9 have an increased need to see a medical doctor as a result of
10 this condition?

11 A Oh, yes, definitely.

12 Q In terms of like fees that you paid in connection with
13 this lawsuit, did you remember hiring a lab?

14 A Yes.

15 Q Did you pay a lab fee of \$150?

16 A Yes.

17 Q Did you have to hire your medical doctor to talk about
18 the connection between your symptoms and the exposure?

19 A Yes, I did.

20 Q Did you have to pay him \$300?

21 A Yes.

22 Q And then other costs, did you pay for transcripts for
23 your medical records?

24 A Yes, I did.

25 Q Deposition transcripts, et cetera?

1 A Yes.

2 Q Were your other costs \$1,452.66?

3 A Yes.

4 Q And attorney fees expended to date about \$15,760?

5 A Yes.

6 Q Yvonne, do you believe that Triangular Coatings responded
7 appropriately to your notice that you had these issues?

8 A No, they did not.

9 Q Did they show any concern or any care about the fact
10 there was an issue with their product?

11 A No.

12 MS. McLEAN: All right. Your Honor, I have nothing
13 further.

14 THE COURT: You've settled part of this case with
15 Mosaic, haven't you, and Michael Yablon; is that right?

16 THE WITNESS: Yes. Yes, I have, Your Honor.

17 THE COURT: For about \$7,500?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Now, do you have a copy of the doctor's
20 protocol in this matter, a recent protocol on you? Is there a
21 doctor's statement?

22 MS. McLEAN: There was a letter attached to our
23 motion, Your Honor.

24 THE COURT: I'm sorry?

25 MS. McLEAN: There was a letter attached with the

1 petition to enter the judgment. I believe it was --

2 THE COURT: It was a December 11 letter. Is that
3 the one you're referencing?

4 MS. McLEAN: That's correct, Your Honor. I didn't
5 get an updated letter. She's continued to have incidences.

6 THE COURT: This is -- basically this letter from
7 Grand Rapids Family Physicians, and I believe it's from Dr.
8 Mohr, indicates what he was told, basically what he was told
9 by your client, which is all fine and good, but I'm looking
10 for something that relates to tests undertaken and objective
11 determinations of what the lung functions are and those
12 things. Do you have that, any of that?

13 MS. McLEAN: We don't have that, Your Honor. In
14 fact, we never did go through with that because there was a
15 conclusive finding that she has an increase in bronchitis and
16 sinusitis that was a definite marked increase.

17 THE COURT: Well, and I'm not quarreling with you.
18 I just want to try and see if I can -- that she is averaging
19 four visits, four visits per year for respiratory problems in
20 addition to referrals to specialists. I don't see there are
21 any specialists here. Are there specialists that she's been
22 referred to?

23 MS. McLEAN: She has seen an ear, nose and throat
24 doctor to treat the infections. I have those medical records,
25 but she continues to treat through this main doctor. That's

1 who she goes to for everything and then he refers her out. I
2 can solicit testimony, Your Honor, today about what
3 specialists she's seen and what they've done and how they've
4 treated her.

5 THE COURT: Well, I mean, four per year, I mean, you
6 know, I go twice a year just to get a physical, so I'm trying
7 to think of why four per year would be, you know, would be
8 unusual.

9 MS. McLEAN: Well, I believe that that was just for
10 the increase in the bronchial issues that she has; that prior
11 to this she would come in, you know, once or twice a year with
12 a cold or something, and then after this has happened she's in
13 four times a year and she's going to see specialists because
14 these infections just aren't getting cured. She's getting put
15 on multiple different antibiotics.

16 THE COURT: Well, where do I --

17 MS. McLEAN: I can --

18 THE COURT: I'm sorry. I'm asking for something
19 which I hope is not too intrusive here, but I'm asking for an
20 expert specialist's opinion that there has been presumably
21 lung damage and/or an exacerbation of an underlying problem
22 and that lung sufficiency tests have been conducted and that
23 she is subject to antibiotics and perhaps other forms,
24 modalities of treatment for purposes of rectifying this if
25 it's possible and whether or not it can be rectified or

1 whether it's permanent. I don't -- I don't have that right
2 here. I'm not doubting what you're saying. I just don't have
3 that kind of testimony here, do I?

4 MS. McLEAN: Well, Your Honor, if that's the
5 testimony you believe you would need before the Court, I'd
6 like a continuation of today and I can bring a witness in that
7 could present that to you. I wasn't sure exactly what you
8 were looking for today. I apologize.

9 THE COURT: Well, you asked me for a figure here and
10 I've got an attorney fee figure here, but that attorney fee
11 figure of 78 hours, is that just for this defendant or is that
12 for all three defendants?

13 MS. McLEAN: For the whole case from inception up
14 until we reached the recent settlement.

15 THE COURT: Right, but two of the three people have
16 settled out, right?

17 MS. McLEAN: Right, and I did take that number into
18 account, Your Honor. I listed the total and then I subtracted
19 the settlement of \$7,500 from the total that we are looking
20 for and that's why I brought the net damages figure down from
21 that. So the settlement with third parties has been reflected
22 in the number we are looking for. The number, the \$122,000
23 figure, in my motion and my petition I kind of broke down
24 where the numbers are coming from, and then I did put a
25 settlement from third parties in there to reflect that they

1 did get that money.

2 THE COURT: Right. Right, but my point is if that's
3 true, then what you're asking me to do is just drop the
4 attorney fee amount just a very small amount for the
5 settlement compared to this today. Is that what you wanted?

6 MS. McLEAN: You know, Your Honor, I know this is
7 before the Court in terms of attorney fees. We can work out
8 whatever is appropriate if we were to reduce the amount of
9 attorney fees, dividing it by the -- dividing it into quarters
10 essentially, but I'm assuming the whole \$7,500 didn't go
11 against all the attorney fees. You know, if we knocked off
12 even a couple thousand dollars, even, you know, \$3,000, it
13 would still be --

14 THE COURT: Okay. I think I've got a figure
15 here, probably. Anything else? Okay. You may be excused.

16 Anything else you want to tell me about this case?

17 MS. McLEAN: Just that I've worked with these people
18 for a while, Your Honor, and they have endured -- it was just
19 a real shock to them. They bought a product they trusted and
20 what seemed to be innocuous turned out to be something that
21 was dangerous and wasn't consistent with the labeling, and as
22 a result she's been dealing with a chronic problem. We're
23 just looking for some justice, and I would ask that you take
24 that into consideration today in what damages you're going to
25 award to them.

1 THE COURT: Okay. This is what I come up with. I
2 come up with obviously future medical costs and I come up with
3 lab fees, expert fees, costs of \$1,452. Attorney fees, you
4 know, I'll kind of leave those where they are at \$15,760.
5 Blue Care Network insurance claim at \$704.49; pain and
6 suffering, \$60,000.

7 I don't have testimony here on punitive. Punitive
8 would have to be that someone intended recklessly and
9 negligently, and I don't have testimony on that. This is a
10 labeling -- mislabeling case. It's hard to pull punitive out
11 of that.

12 So when I take this and then I subtract \$7,500 for
13 settlement of other parties, I come up and then I round back
14 that attorney fee a little bit. If I round back that attorney
15 fee \$2,200, I come up with \$80,000 --

16 MS. McLEAN: Okay, Your Honor. That's --

17 THE COURT: -- as a total so that we can enter that
18 as a judgment for \$80,000 for Yvonne Jakubowski against
19 Triangle Coatings, Inc.

20 MS. McLEAN: Thank you, Your Honor.

21 THE COURT: And that includes everything.

22 MS. McLEAN: Thank you.

23 THE COURT: Will you please prepare the judgment and
24 give it to me, send it to me? I'll sign it and we'll be on
25 our way.

1 MS. McLEAN: I will, Your Honor, thank you.

2 THE COURT: Thank you. Again, I apologize for
3 having you wait so long. This was a crazy afternoon as you
4 could see. Entertaining, maybe, to you, but kind of crazy.
5 Thank you so much.

6 MS. McLEAN: Thank you, Your Honor.

7 (Proceedings concluded at 3:27 p.m.)

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11 I N D E X

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13 Witness: Page

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15 YVONNE E. JAKUBOWSKI

16 Direct Examination by Ms. McLean 3

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CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

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